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[APPELLATE CIVIL JURISDICTION]

McELWAINE, C.J. (S.S.), GORDON-SMITH, J. AND MURRAY-AYNSLEY, J.

December 12, 1938.

GAN KHUAN v. TAN JIN LUAN.

(SELANGOR CIVIL APPEAL No. 3 of 1938)

Partnership—Account Books—Inspection by skilled agent—Limitations of right of.

A partner has a right to inspect and take copies of the firm's books by an agent provided the agent is a person to whom no reasonable objection can be taken and the knowledge acquired by him through such inspection is not likely to be used to the detriment of the partnership.

CIVIL APPEAL.

Mundell (*Cumarasami* with him) for Appellant.

Shearn, for Respondent.

McElwaine, C.J. (S.S.)—The Plaintiff respondent commenced an action against his partners the defendent appellant and another in which he prayed for a decree of dissolution of the partnership; the appointment of a receiver and manager; a declaration that he is entitled by or through an independent accountant to be appointed by him to examine, copy or take extracts from the books of account, bills and other writings kept by the above-named defendant appellant as managing partner, and for an injunction to restrain the said defendant appellant for interfering with the examination etc. of the books of account by such accountant.

Having issued his plaint the plaintiff moved for an injunction restraining the defendant from preventing or interfering with the examination or investigation by Mr. W. J. P. Grenier, a certified accountant, appointed by the plaintiff for the purpose of examining the books of account etc. kept by the defendant.

After argument, Terrell J. granted the injunction on Mr. Grenier's undertaking not to make use of the information he might acquire for any other purpose but that of advising the plaintiff.

From this injunction the defendant appeals.

In England a partner is entitled to have access to inspection of and to take copies of the firm's books personally, or subject to reasonable limitations, by his agent. 24 *Halsbury* (*Hailsham* edition) section 900.

In the case of a partnership the books of the firm are the property of each partner. Each partner has the right to inspect his own books and what he can do himself he can do by his agent unless it can be shewn that the knowledge acquired by the agent may be detrimental to the interests of the partnership.

Mr. Mundell contended that it is not enough that the agent should be a proper person; it must also be shewn that examination by the agent was necessary by reason of the principal's inability to inspect or to understand or to appreciate the implication or effect of the books and accounts and he supported his argument by quoting *Lindley* on Partnership 10th edition p. 480:

> "The right of inspection by an agent is not so absolute as the right to a personal inspection, and may be refused if the Court is satisfied that the assistance of an agent is not reasonably required or that the inspection is wanted for an improper purpose."

I am not satisfied that the inspection was wanted for an improper purpose. No personal objection was taken to Mr. Grenier but it was said that as he had not a knowledge of Chinese, it would be necessary for him to have the assistance of a Chinese translator. There is no substance in this objection so long as the translator (who may be regarded as an agent of the partner) is not an individual to whom objection can be taken on the ground that knowledge acquired by him is likely to be used to the detriment of the partnership.

Then it is suggested that as the respondent is a business man of experience with a knowledge of Chinese accounts he does not require the assistance of a skilled accountant.

The passage from *Lindley* which I have quoted does not say that inspection by an agent must be refused, if the inspection is unnecessary.

I think there is no doubt that inspection by Mr. Grenier would be convenient to the respondent. He is a man with business interests all over Malaya and he has sworn that he has not the time available to make a copy of the accounts personally so as to be in a position to submit them to a professional adviser.

It is probable that Mr. Grenier will not require to make a copy of all the accounts and documents. All that may be necessary for his purpose is extracts which to a man of his profession may seem suspicious or requiring explanation.

The learned trial judge has in effect found that the appointment of Mr. Grenier to inspect the books is not unreasonable and with this conclusion I agree.

In *Dodd v. Amalgamated Marine Workers Union* 39 T.L.R. 379 the Court of Appeal set aside a decision of Astbury J. on the ground that Astbury J. had ordered the Union to produce books on an interlocutory application but the ground of appeal that the proceedings in the present case were interlocutory was withdrawn as not being open to the appellant.

In *Dodswell v. Jacobe* 24 Ch. D. Lindley L.J. said at page 286:—

> "I am not at all prepared to deny his (the principal's) right to have the books inspected by a person whom the Court thinks is a proper person."

After quoting from this Judgment Henn Collins L.J. in *Bevan v. Webb* (1901) 2 Ch. at p. 73 proceeded:

> "So that although the principal had not an absolute and unqualified right to have the books inspected by any one he pleased, which was what he claimed, the Court held that he had the qualified right of inspection by some one else, provided that that agent was one to whom no reasonable objection could be taken."

Dodd v. Amalgamated Marine Workers Union again came before Astbury J. (1923, 2 Ch. 236) for trial when the learned judge having referred to Parker J's judgment in *Norey v. Keep* (1909) 1 Ch. 561 said:—

> "What is a proper case? I am not going to attempt any general definition to suit all circumstances. I conceive that if it were proved (the onus being on the defendants) that the accountant was being brought in for the purpose of injuring them at the instigation of a rival union the Court would say it was not a proper case to enforce this prima facie right to inspect through an agent.
>
> The only matter I have really to decide is whether the defendants have established that this was not a bona fide application on the plaintiff's part to exercise a right which he clearly had in a proper case, and in his interests of the many members who take the same view as to the way the union's funds have been dealt with and its business managed."

And at page 242 he said:—

> "The plaintiff has been for a long time a trade Union official, and I think a large number of the matters which he desires to see from the books are matters which, if he gets the right book and reads it carefully, he could find out for himself. But that by no means disposes of the case."

In his affidavit sworn on 3rd October, 1938, the plaintiff alleged that the defendant Gan Khuan had been guilty of irregularities some of which he specified. In an answering affidavit Gan Khuan offered explanations of the alleged irregularities which had been specified. Those explanations may be perfectly valid but assuming that they are, the fact does not preclude the plaintiff from his right to inspect—or to have inspected by a competent and unobjectionable accountant —the accounts of the managing partner of the firm.

The plaintiff wrote on 7th September, 1938 to the defendant:—

> "As there are some doubts regarding the correctness of the accounts will you please submit same to Messrs. Walter Grenier & Company for audit.
>
> If after receipt of the Auditor's Report it is found that there was no justification for the foregoing step to be taken, I am prepared to pay for the expenses in connection with it."

The appointment of Mr. Grenier as the plaintiff's agent is reasonable and it is not suggested that Mr. Grenier is a person who will make improper use of the information he will acquire from the inspection.

The appeal is dismissed.

Gordon-Smith, J.—I have had the opportunity of perusing the Judgments of my brothers McElwaine and Murray-Aynsley and I do not think that I can usefully add anything to what is therein contained. I concur fully with both these judgments.

Murray-Aynsley, J.—This case deals with a short but important point in the law of partnership, viz. the right of one partner to employ an accountant to examine the books of the firm. The partnership in this case is a mining kongsi with a capital of $84,000, that is to say, it is one of medium size. Differences have arisen between the partners. At this stage of proceedings it is impossible to form an opinion as to the merits of the case. On the one hand, the Plaintiff has not established any irregularities in the keeping of the accounts and the defendant has not established any *mala fides* on the part of the Plaintiff.

There is unfortunately not much authority. The only partnership case of any value is *Bevan vs. Webb*. It would not be possible to apply the trade union cases without reservations. These latter cases depend on the construction of a different Act of Parliament and the circumstances are different. A trade union has many members, a partnership few, and in partnership an important consideration is the liability of partners for the debts of the firm. A partner labours under an urgent necessity of being accurately informed as to the financial position of the firm. If anything a Court should grant the relief sought more readily in a partnership case than in a trade union case.

That such a right exists is clear since the case of *Bevan vs. Webb*. Before that it was not clear, as Joyce J. refused the Plaintiff the relief that was

granted in the Court of Appeal. That case is the primary authority and I do not consider that earlier cases are of any assistance. The difficulty is to ascertain what limits are to be placed on the exercise of that right.

The trial judge in the present case set out two:—

"(a) that the agent is a person to whom the other partners cannot reasonably object.

(b) that the right of inspection is not exercised unfairly or to the detriment of the firm."

With this, so far as it goes, I think no one would disagree. Both conditions are satisfied in the present case. But it has been argued on behalf of the defendant that the right is subject to a further qualification viz. that there should be a reasonable necessity for employing an agent, which means in other words that the partner who desires to employ an agent should be unable to make an effective examination by himself.

Here the plaintiff is a gentleman well acquainted with the workings of Chinese mining kongsis and he would presumably understand the books of the firm. Is this a reason why the relief he asks for should be refused? It is necessary to examine the basis for the decision in *Bevan vs. Webb*. The judgments appear to be based on two grounds, first the right of a person to do by an agent what he can do by himself, secondly the inability of the plaintiffs in that case who had no knowledge of the business of the partnership to understand the accounts of the firm without assistance. The latter ground does not exist in the present case. Is the former ground then sufficient by itself or must the Plaintiff show some special reason why the employment of an accountant is necessary?

In my opinion the Courts should be reluctant to impose restrictions on the way people exercise their rights. I consider that the proper person to decide whether an accountant is necessary is the Plaintiff himself, who is liable personally if the firm should prove insolvent. In any business there are questions which depend not on mere book-keeping but on matters which belong to accountants rather than book-keepers, and even in very small concerns the assistance of an accountant is necessary or at least desirable. It should be noted that there does not appear to have been any outside audit.

For these reasons I consider that the order appealed against was correct and the appeal should be dismissed. Another point was raised namely that the order was nugatory in that Mr. Grenier the accountant named in the order knows no Chinese and in consequence would be unable to examine the books. I think that this question is really one of the interpretation of the order.

My own view is that the appointment of a professional accountant would imply, as in the case of a solicitor, the employment of clerks and other subordinates in the usual course of business. But even if the order were limited to Mr. Grenier personally, I think that the order would not be nugatory as the Plaintiff himself would undoubtedly be entitled to accompany Mr. Grenier and do the necessary interpretation.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

August 1, 1939.

PUBLIC PROSECUTOR v. DRIS BIN TAIB.

(PERAK MAGISTRATE'S CRIMINAL APPEAL No. 55 of 1939)

Road Traffic Enactment No. 17 of 1937, Ss. 80 (i), 113 (2) (b), 118 (i) (a)—using private car as stage carriage without licence—evidence of carriage of passengers—presumption—acquittal of accused without calling on defence—duty of Magistrate to call on defence.

Upon a charge under Section 80 (i) of the Road Traffic Enactment of using a private car as a stage carriage without a licence an offence punishable under Section 118 (i) (a) of the Enactment, the evidence of the prosecution established that there were four passengers in the car but the Magistrate acquitted the accused without calling upon him to enter his defence.

Held, that once it had been established by uncontroverted evidence that there were passengers in the car a presumption arose under Section 113 (2) of the Road Traffic Enactment and that the Magistrate, inasmuch as there was evidence against the accused to be considered, should have called on the defence.

MAGISTRATE'S CRIMINAL APPEAL.

The accused in this case was charged on the 13th June, 1939, with using a private motor car as a stage carriage without a licence in that behalf, an offence under section 80 (i) and punishable under section 118 (i) (a) of the Road Traffic Enactment No. 17 of 1937.

At the trial only two witnesses were called by the prosecution. The first a driver of an Omnibus Company, deposed that four Malays asked for a taxi to go to Kuala Kangsar and had already seated themselves in the taxi. Suddenly the accused came with his